IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8346 OF 2005

Smt. Rattandeep Kaur wife of Late Shri Harcharan Singh ..Petitioner

Vs.

1. Union of India and ors. ..Respondents

Mr. G.K. Masand with Smt. S.R. Sawant for petitioner.

Mr. I.A. Engineer with Mr. G.C. Mishra for respondents.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date : November 27, 2006.

P.C.:

1. Heard Mr. Masand with Smt. Sawant the learned counsel for the petitioner, who was working as Appraiser of Customs and was issued a memorandum of charges dated 10/7/1989. Petitioner replied the same on 23/8/1989. The incident on which the charges were based on the examination report on six Shipping Bills dated 23/9/1986 bearing Nos.091742 to 091747 pertaining to goods described as 100% Polyester Suitings in trouser lengths and passed the same for export under DEES Scheme without actually examining

the goods. The goods brought for shipment under the said Shipping Bills in fact consisted of used gunny bags, terrycoats pants pieces and fabrics instead of 100% Polyester suitings in trousers lengths as declared in the Shipping Bills and thus involving loss of Customs Revenue to the extent of Rs.3.00 Crores. Departmental inquiry was instituted and the Inquiry Officer submitted his report on 28/2/1991. The petitioner submitted his defence against the said report and he was granted personal hearing by the Commissioner on 22/1/1992. By order dated 7/12/1992 the petitioner was imposed the penalty of removal from service. The petitioner submitted an appeal against the said order of Commissioner to the Appellate Authority and the appeal was dismissed by the order dated 20th/23rd September, 1995. Both these orders came to be challenged by filing O.A. No.150 of 1996 before the Central Administrative Tribunal, Bench at Mumbai and the said O.A. was allowed by an order dated 21/6/2002 which was challenged in Writ Petition No.72 of 2003. A Division Bench of this Court by its Judgment and Order dated 21/4/2004 was pleased to set aside the Tribunal's order dated 21/6/2002 and the matter was remanded back to the Tribunal for fresh

hearing on merits. Ultimately, by the impugned Judgment and Order dated 8/10/2004 the Tribunal was pleased to dismiss the said O.A. No.150 of 1996.

2. The following main grounds were taken up before the CAT challenging the order of removal:-

(a) Shri S.P. Joshi, who associated with the investigation of the case and also recorded statement of witnesses was appointed as Presiding Officer to represent the case on behalf of Disciplinary Authority which is against the principles of natural justice.

(b) The Presenting Officer has examined only three witnesses who did support the case of the department and these witnesses S/Shri Shrikant R. Tiwari, J.T. Chopra, Yuvraj Pandu More were not examined.

(c) Three documents were not allowed to be produced on the ground of non-availability. If the documents were not available, the secondary evidence must have been produced.

(d) The report of the Central Vigilance Commission with regard to the punishment to be awarded was not furnished to the applicant to enable him to represent against the same.

(d) The findings of the guilt recorded by the Inquiry Officer are perverse and based on no evidence.

3. So far as the first issue was concerned, it was already held against the petitioner by this court in W.P. No.72 of 2003 as per the order dated 21/4/2004 and similarly the issue of non-examination of the named three witnesses was also considered by this court. The reasons given by the department for not examining these witnesses was accepted and it was noted that they were not kept away from being examined. Even otherwise, it was always open to the delinquent employee to have examined the witnesses named as above and/or to make an application before the Inquiry Officer to examine such witnesses. That was not done and, therefore, the second ground on the basis of which the Inquiry was held to be vitiated by

the CAT was also set aside by this court.

4. Mr. Masand, therefore, argued before us regarding the failure to provide the report of the Central Vigilance Commission (CVC) with regard to the punishment to be awarded and submitted that the Tribunal fell in gross errors. By referring to the decision of three Judge Bench in the case of Sunil Kumar Banerjee Vs. State of West Bengal (AIR 1980 SC 1170) the CAT referred to the record. It held that there was no reason to believe that the Disciplinary Authority's mind in any way was influenced by the advice of CVC and the said Authority had arrived at his own conclusion based on the material available before him. The CAT also noted that there was no prejudice caused to the petitioner on account of non supply of the Vigilance Comission's report/recommendations and more particularly in view of the subsequent decision in the case of Pradeep Chand Parija Vs. Pramod Chand Patnaik [2001(8) Supreme 548].

5. The learned counsel then referred to para 32 of the Central Manual of Appraising Department Volume

II appearing on page 759 which reads as under:-

> "Samples which are required by the Custom House for inspection or chemical test from the Dock and Jetties respectively should reach the Custom House before 3.50 p.m. beyond which time Group Appraiser cannot receive them. In case where the samples have been drawn within the stipulated time but for unavoidable reasons cannot be delivered by 3.50 p.m. the exporters or the clearing agents may approach the Public Relation Officer who, if he considers that there are sufficient reasons for the delay, will recommend acceptance to the principal Appraisers concerned. Should sample be drawn during the last round of examination the time should be endorsed on the Bill of Entry by the E.O."

6. It was contended that if the respondents had sealed and forwarded the samples on 30/9/1986, no explanation was coming forth as to where and under whose orders the samples were kept for the intervening period from 30/9/1986 till 3.50 p.m. on 1/10/1986.

In addition, the evidence of Shri Shrikant R. Tiwari was alleged to have been kept away from the Inquiry on this ground. The Tribunal noted the depositions of Shri Kokam who had stated that the samples were handed over to the exporter's representative on 30/9/1986 and he kept them with him and deposited it in the Custom House on the next dated i.e. on 1/10/1986 which was the date of its receipt in the Custom House. The Tribunal accepted that the samples were sealed on 30/9/1986 and in any case in a departmental inquiry the findings are based on preponderance of probability and one cannot rely upon the strict rules of evidence. Shri C.E.M. Fernandes the Cargo Supervisor of M/s United Liner Agency Pvt. Ltd. had clearly stated that the shipping bills were handed over to him at about 11 a.m. on 1/10/1986, but he did not see any custom officer examining the goods and weighing the cargo. Further it was established in the inquiry that none of the staff members, including the Scaleman had seen the petitioner in MOD area on 1/10/1986. It was further established that the petitioner had given the examination report one day in advance and when the fact of late receiving of consignment was brought to his notice on 1/10/1986 perhaps by the exporter

himself, he immediately changed the dates and that too with different pen and ink. In this regard it would be necessary to refer to the Article of charges (d) and (e) which read as under:

> (d) Shri Harcharan Singh caused some samples brought by the exporters' representative to be sealed at Shed NO.2 Indira Docks on 30/9/1986 as the genuine representative samples drawn from consignment covered by Shipping Bill Nos.091742 to 091747 which were carted to MOD on 1/10/1986.
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> (e) Shri Harcharan Singh tampered with the date 30/9/1986 appearing below his endorsement on the Shipping Bills Nos.091742 to 091747 to appear it as 1/10/1986.

7. By considering the evidence adduced before the Inquiry Officer, the Tribunal accepted the findings of the Inquiry Officer that all the charges were substantially proved against the petitioner and all the objections raised in his defence by the petitioner were duly considered by the Inquiry Officer. So far

as the punishment is concerned, the Tribunal rightly noted that it could not sit in appeal over the decision of the Disciplinary Authority or the Appellate Authority regarding the quantum of punishment.

8. We have no doubt in our mind that the reasons set out by the Tribunal while dismissing the O.A. of the petitioner cannot be termed as illegal or erroneous and, therefore, there is no case made out to entertain this petition.

9. Hence the petition fails at the threshold and the same is hereby rejected summarily.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**